

The Petition of Ausgar Pichen - No.22 on the Charge Sheet

Ausgar Pichen, (hereinafter called "the Petitioner"), submits a petition to the Confirming Officer against the Finding and Sentence pronounced upon him in Open Court at Luneburg on 16 and 17 November 1945 on the following grounds :-

1. That the Petitioner is not guilty of the charge against him
2. That the particulars in the First Charge in the Charge Sheet do not disclose a War Crime

The Petitioner submits that the alleged ill-treatment by the members of the staff of Bergen-Belsen Concentration Camp was not a "War Crime" within the definition given in the Regulations attached to the Royal Warrants dated 14 June and 4 August 1945; i.e. that there was no evidence of a violation of the laws and usages of war committed during any war in which His Majesty has been or may be engaged at any time since the 2nd September 1939. The only purpose of making a war crime punishable in the individual is that it is a means of securing legitimate warfare; that without this terror hanging over individuals it would not be certain that mere international action on international level would secure legitimate warfare.

The policy of concentration camps was started by Hitler within a few weeks of his ascension to power in early 1933. It was continued with ever increasing intensity throughout the whole time of peace and it would have been continued after the war if the Germans had won. It was part of a national German policy aimed at the degradation and ultimate extermination of the Jewish and other races whom the Germans regarded as their inferiors. The events alleged against the members of the staff of Bergen-Belsen Concentration Camp, although occurring during a war in which His Majesty was engaged since 2nd September 1939 had no logical connection with that war whatsoever. Those events were the direct consequence of a policy which was begun in peace as a peacetime policy and was intended to be carried on as a permanent and long-term policy until its purpose was achieved - they had nothing to do with the operations of war whatsoever.

From the Allied Nations point of view it assists in no way the security of their forces or the operations of their armies to punish someone who has been guilty of misbehaviour in a German Concentration Camp.

3. That the learned Judge Advocate General omitted to direct the Court as to law on the following points :-

- (i) As to the law affecting the application by the Defending Officers to sever the two charges in the Charge Sheet and to have them tried separately. (Transcript 1. page 8.)

The Judge Advocate General in his summing up on that application said to the Court (Transcript 1. page 14.) "You have had the law, such as it is, put very fairly and properly before you. ---- That is entirely a matter for you. You have had your attention directed to all the relevant matters."

The law affecting that application was in issue and as a result of the Judge Advocate General omitting to advise the Court as to what was the proper law, the Petitioner humbly submits that the application was wrongly refused. Consequent upon the two charges not being severed and tried separately, evidence of a nature prejudicial to the Petitioner was wrongly admitted.

The Petitioner was included in the first charge only and submits that the evidence given on the second charge naturally tended to his prejudice.

In replying to the application by the defence, the learned Prosecutor said (Transcript 1. page 12) "Dealing with the question of whether the two charges should be taken together or separately, my friend suggests that they do not come within R.P.16. I am afraid I entirely disagree. We disagree, of course, not on the law but on the facts. ---- The allegation of the prosecution is that ~~ht~~ these two cases are a continuation of a series insofar as those persons who were at Auschwitz are concerned!"

There was no evidence before the Court that the Petitioner was ever at Auschwitz (he was not included in the second charge - "the Auschwitz charge") and it is humbly submitted that the Petitioner could not properly be said to have been concerned in a series of activities which took place at Auschwitz and were continued at Belsen.

The Petitioner does not deny that evidence of his activities elsewhere than at Belsen would have been properly admissible in evidence to prove a systematic course of conduct in order to disprove a defence of accident - but it is submitted that as the Petitioner was not at Auschwitz, evidence of activities in the Concentration Camp there should not have been admitted before the Court on the charge alleging ill-treatment of Allied Nationals at Bergen-Belsen Concentration Camp.

- (ii) The Petitioner humbly submits that there was insufficient evidence before the Court upon which it could be said that the Petitioner was (a) concerned together with other accused as parties to the ill-treatment of internees at Bergen-Belsen Concentration Camp or (b) a member of a unit or group as a result of whose concerted action a war crime has been committed, (bringing the matter within the scope of Regulation 8(ii)) and that

consequently he can only be convicted upon acts proved to have been committed by him personally and which constitute a war-crime. In such a case it is submitted that the victim of the acts alleged against the Petitioner must be proved to have been an Allied National and that the learned Judge Advocate should have so directed the Court. No evidence was tendered as to the nationality of the victims of the acts alleged against the Petitioner who submits that even if he had committed those acts, which he denies, it is incumbent upon the Prosecution to prove the victims were of Allied Nationality before he can rightly be said to have committed a war crime. It is not open to the Court to assume that as there were many Allied Nationals in Bergen-Belsen Concentration Camp, the alleged victims of the Petitioner were in actual fact Allied Nationals. Owing to this non-direction by the learned Judge Advocate General, the Petitioner humbly submits that he was wrongly found guilty of having committed a war crime.

4. That the weight of the evidence was against the finding of "guilty" given against the Petitioner and the sentence passed upon him.

The evidence against the Petitioner was contained in the oral evidence of Sophia Litwinska (Transcript 7 pages 6 and 7, and 11 and 12); the oral evidence of Anni Jonas (Transcript 7 page 20); the affidavit of Jekel Gutman (No.30 Exhibit 32); the affidavit of Simcha Zamoski (No.179 Exhibit 32); the affidavit of Stanislava Halota (No.39 Exhibit 36); and the affidavit of Estera Wajsbium (No.167 Exhibit 89).

The witness Anni Jonas recognised the Petitioner in Court as being in charge of Kitchen No.1 at Belsen but made no specific allegation against him.

The affidavit of Gutman corroborated the affidavit of Zamoski in alleging that the Petitioner was an S.S. man at Dora and at Belsen Camps, and that at Dora he was in charge of the bath-house and at Belsen he was in charge of one of the cookhouses. Zamoski appeared in Court as a witness in person and after testifying that he knew the man in charge of the bath-house at Dora, added that he had never seen him again. The witness did not identify the Petitioner on an identification parade in Court and the Petitioner submits that not only should these affidavits have been completely discounted but taken as examples as to how completely unreliable the Prosecution's affidavit evidence was.

The affidavit of Halota alleged that the Petitioner had shot two male prisoners outside No.1 Kitchen. This incident was completely uncorroborated. The Petitioner respectfully refers to the remarks of the learned Judge Advocate General regarding affidavits contained in the last two paragraphs of page 4 of transcript 51, and humbly submits that this affidavit carries no weight whatsoever.

The oral evidence of Litwinska and the affidavit of Wajsblum are apparently corroborative of each other in alleging that the Petitioner was responsible for shooting and killing certain internees outside No.1 Kitchen. There are several grave discrepancies between the two allegations and the Petitioner respectfully refers to the points made in his defence contained in paragraphs two and three on page 33A Transcript 47. 36

The witness Litwinska did not name the Petitioner in her accusation but referred to "the S.S. men in charge of the kitchen" as being the persons responsible for the killings. During her examination-in-chief this witness did not identify the Petitioner as having been concerned in the shooting; nor did she do so when the Petitioner was stood up before her in cross-examination and she was invited to recognise him.

The Petitioner humbly submits that an alleged eye-witness who did not identify him after two opportunities cannot reasonably be said to be speaking about him in the witness' allegations, if those allegations are true and not a made-up story.

The two prosecution witnesses who came to Court to make allegations against the Petitioner did not identify him as the man concerned in those allegations. In these circumstances the Petitioner suggests that it is of the very essence of an accusation of killing by an eye-witness that the witness should identify the perpetrator, and that if this is not done, the gravest suspicion is thrown upon his evidence.

In this case the Petitioner humbly submits that the Court in all the circumstances could not reasonably come to the conclusion that he was the man responsible for the acts alleged against him.

The Prosecution suggested that the Petitioner had not been identified by these two witnesses in Court because he had changed his appearance. In answer to this the Petitioner relies on the fact that the Prosecution witness Anni Jonas (Transcript 7 page 20) had no difficulty in recognising the Petitioner.

On the foregoing grounds, and on account of any other matters pertaining thereto, the Petitioner humbly submits that he is not guilty of the charge in respect of which he has been found guilty and in respect of which he has been sentenced to death by hanging and humbly prays the Confirming Officer that the finding be quashed and the sentence remitted.

For and on behalf of the above-named
Petitioner Ausgar Pichen

A. Pichen
Capt. R.A.
Defending Officer Appointed.

27 November 45.